

Serial: **158550**

IN THE SUPREME COURT OF MISSISSIPPI

No. 2008-KA-01139-SCT

***GABRIEL McDOWELL a/k/a GARY
McDOWELL***

v.

STATE OF MISSISSIPPI

ORDER

¶1. This matter is before the Court en banc on the issue of the Hancock County Circuit Court's imposition of a life sentence upon Gabriel McDowell as a habitual offender pursuant to Mississippi Code Section 99-19-83 (Rev. 2007). The lengthy procedural history of this case may be gleaned from a reading of *McDowell v. State*, 807 So. 2d 413 (Miss. 2001); *McDowell v. State*, 917 So. 2d 801 (Miss. Ct. App. 2005); and *McDowell v. Mississippi*, 552 F. Supp. 2d 602 (S.D. Miss. 2008). After the federal district court's decision to remand this case to state court for a third resentencing hearing, the Hancock County Circuit Court resentenced McDowell to a term of life imprisonment as a Section 99-19-83 habitual offender. The record reveals that the trial court's imposition of a life-without-parole sentence was due in large part to the trial court's dutiful reliance upon an order entered by a three-justice panel of this Court on October 17, 2002. Upon consideration, this Court has determined that this panel order should be vacated, and this case should be remanded to the

Circuit Court of Hancock County for the imposition of a thirty-year sentence without parole. See *Dycus v. State*, 440 So. 2d 246, 257-58 (Miss. 1983).

¶2. IT IS THEREFORE ORDERED that the October 17, 2002, order of a three-justice panel of this Court is vacated; the judgment of the Hancock County Circuit Court imposing on Gabriel McDowell a life sentence without parole is vacated; and this case is remanded to the Circuit Court of Hancock County with instructions to resentence Gabriel McDowell to a term of imprisonment of thirty years in the custody of the Mississippi Department of Corrections, and such sentence shall not be reduced or suspended, nor shall McDowell be eligible for parole or probation. *McDowell*, 807 So. 2d at 426 ¶40. See also *Gill v. State*, 962 So. 2d 552, 555 (Miss. 2007). McDowell, however, is entitled by law to credit for time thus far served on the original sentence imposed on January 7, 2000.

¶3. SO ORDERED, this the 9th day of November, 2009.

/s/ George C. Carlson, Jr.

GEORGE C. CARLSON, JR.,
PRESIDING JUSTICE

GRAVES, P.J., NOT PARTICIPATING.